FILED

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(2)

No. 00-124

In The

Supreme Court of the United States

PARTIDO ACCION CIVIL,

Petitioner,

v.

COMMONWEALTH OF PUERTO RICO

On Petition For A Writ Of Certiorari
To The Supreme Court Of Puerto Rico

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PARTIDO LABORAL UNION SOCIAL IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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MOTION OF PARTIDO LABORAL UNION SOCIAL FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

Partido Laboral Unión Social hereby respectfully moves for leave to file the attached brief *amicus curiae* in support of the petition for a writ of certiorari in this case. The consent of the attorney for petitioner Mr. Nelson Rosario-Rodriguez has been obtained. The consent of the attorney for respondents Mr. Gustavo Gelpi Abarca and Mr. Ramón Marino-Walker has been requested, but they express they have to ask for permission to the Commonwealth Secretary of Justice, Mr. Angel Rotger-Sabat and Commonwealth Election Commission President Mr. Juan R. Melecio respectively.

There is a warning of hurricane emitted by the National Weather Bureau for Puerto Rico. Commonwealth Government proclaims Puerto Rico in emergency state and suspended labor until new announcement. That means that the Secretary of Justice and the Commonwealth Election Commission cease their operations until new announcement. Attorney for respondents will not discuss the consents for the Amicus Curiae with their clients. That is an effective refusal to consent.

Mr. Roberto Hernandez does not work already with the Commonwealth Justice Department who he represented. The Commonwealth is represented by the Attorney General Mr. Gustavo Gelpi. Mr. Hernandez right now is not attorney for any respondent. Mr. Carlo, when consent was asked, was out of office because a bone fracture said his secretary. They said will call back, but for the

Hurricane they did not call today. Our efforts to communicate has been fruitless. That is also an effective refusal to the consent.

The petition in this case challenges the constitutionality of Puerto Rico's rule that only lawyers may circulate petitions seeking voter support for the placement of new political parties on the ballot. Amicus Partido Laboral Unión Social (the "Party") has, since May of 1998, been seeking to obtain the 97,864 voter endorsements necessary under Puerto Rican law to obtain ballot access. It has been prevented by the lawyer-only requirement from obtaining the necessary signatures.

In 1999, the Party initiated litigation in the courts of Puerto Rico challenging the lawyer-only requirement as a violation of its constitutional rights. Its complaint was dismissed by the trial court. *Partido Laboral Unión Social v. Comisión Estatal de Elecciones,* No. KPE99-2227(904). This decision was affirmed on appeal, *Partido Laboral Unión Social v. Comisión Estatal de Elecciones,* No. KLAN4000507, and a three-judge panel of the Supreme Court of Puerto Rico, with one judge dissenting, denied certiorari. *Partido Laboral Unión Social v. Comisión Estatal de Elecciones, et al.,* No. CC-2000-606. If the petition for certiorari in this case is denied, all new political parties in Puerto Rico, including petitioner Partido Acción Civil and amicus Partido Laboral Unión Social, will effectively be prevented from obtaining the affidavits required for ballot access even though they have the support of the required number of registered voters. Amicus Party believes that its experience with the challenged lawyer-only requirement, which

experience is set forth in the attached brief, will be helpful to the Court in considering whether to grant the petition for certiorari in this case.

Respectfully submitted,

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INTEREST OF THE AMICUS

The interest of the amicus is set forth in the preceding motion for leave to file this brief.

ARGUMENT

In May of 1998, amicus Partido Laboral Union Social, (hereinafter the Party) began an effort, according with the Electoral Law, to gather the 97,874 endorsements required to register as a party to appear on the Commonwealth of Puerto Rico's 2000 election ballot. According to Section 3101 of the Electoral Law only lawyers that are also notaries can notarize each voter's endorsement. As it is stated in the petition for certiorari of the Civil Action Party, only lawyers admitted to the bar can be notaries in Puerto Rico.

The Party has six lawyers working part-time in the gathering of the endorsements. Those six lawyer-notaries have gathered 46,196 endorsements in 25 months. It was impossible for the Party, despite all its efforts, to recruit more lawyers. The total number of attorney-notaries in Puerto Rico is less than 7,000. The majority of those lawyers are employees. That fact considerably reduces the total number available for petition circulators. All the lawyers that participate in the endorsement gathering for the Party are solo practitioners. But for the solo practitioner it is extremely difficult to embrace the gathering task, because those practitioners have living and office cost's that are not compensated by the $1.00 paid per endorsement by the Election Commission. The charge for normal – non party petition – affidavits taken in the usual

business course is at least $10.00. Such affidavits are notarized in the lawyer's office and the notary has to make only two reports. Ballot endorsements for a party, on the other hand, have to be taken on the streets and four reports have to be made for just $1.00. That is a heavy burdensome effort of gathering the endorsements and the burden is increased because of the required paperwork. The notarial law in Puerto Rico requires that the lawyer-notary has to be present when each person signs his or her affidavit.

Since every lawyer-notary in our Party has his or her own job and office to maintain, it is only on holidays and after working hours that we can gather ballot endorsements. It is not true, as stated in the opinion of the Supreme Court of Puerto Rico, that the volunteers of the Party can effectively collect endorsements. See to the Petition for Certiorari, 14D-15D. Only lawyers can gather endorsements because every person has to complete and sign his or her affidavit before a lawyer-notary. It is a logistic chaos taking persons in advance, talking with the electors that are passing by in the street or are doing their things in the house and then wait for the attorney to arrive and take the signature. The process simply does not work that way. The method of taking endorsements is that the person that talks to the citizens is the same person who can take their signature. The process is described in *Meyer v. Grant*, 486 U.S. 414, 421-422 (footnote 4) (1988).

The problem with the lawyer notarization requirement does not stop there. After the endorsement is gathered, there is a period of seven natural days in which the lawyer-notary must present to the Elections Commission

the original and two copies of each separate endorsement affidavit along with six copies of a report that consists of fifteen names, in alphabetical order, of voters who have signed affidavits. This is a heavy and extremely onerous requirement that is even more difficult to satisfy than the gathering of the endorsements itself.

In addition to the initial report to the Commission, lawyer-notaries make another report, every two weeks, also for the Commission. And for the Supreme Court of Puerto Rico, according with the responsibility as a lawyer-notary, the attorney has to pass by hand every endorsement taken in the affidavit book and make a monthly report to the Court. There are therefore, four reports that the lawyer-notary has to make for each endorsement taken.

Amicus Party has made a real and bona fide effort to comply with the law. But it is impossible for a party, unless it has a great deal of money, to gather sufficient signatures while complying with the lawyer notarization requirement.

It is important to mention that we have no doubt that we could obtain sufficient support to register the Party, if we were able to use party volunteers to gather endorsements as *ad hoc* notaries. The people are eager to give endorsements. The people are not the problem, the problem is the heavy burden that the lawyer notarization requirement places on the gathering of endorsements for a political purpose. That burden has been placed by the three traditional parties that do not want another party that can contend for political power. The inability to use

non-lawyer Party volunteers to gather endorsements severely restricts freedom of speech.

The requirement that only lawyers can gather the endorsements for registering a new party is a blunt action of the traditional parties to freeze the status quo. The legislature is an alter ego of the three traditional parties because all the members of the legislature are members of one of the three traditional parties. They have made a law imposing a requirement (lawyer notarization) with which they themselves did not comply. They know that the requirement that an attorney notarize each endorsement will make it impossible for new parties to gain access to the ballot. The Electoral Commission is also an alter ego of the three traditional parties; each party has a Commissioner and they decide all electoral matters.

Lastly, it is important to mention that the Party filed a suit challenging the constitutionality of the lawyer-notarization requirement in the courts of Puerto Rico. See *Partido Laboral Unión Social v. Comisión Estatal de Elecciones et al.*, No. KPE99-2227(904), in the Appelative Court *Partido Laboral Unión Social v. Commisión Estatal de Elecciones, et al.* No. KLAN4000507; and in the Supreme Court of Puerto Rico *Partido Laboral Unión Social v. Comisión Estatal de Elecciones, et al.*, No. CC-2000-606. The Party's complaint was dismissed, the intermediate appelative court dismissed our appeal and the Puerto Rico Supreme Court denied the certiorari by a vote of two to one.

As we said before, the Party has obtained 46,196 endorsements using six volunteer lawyer-notaries. Although we agree with the Civil Action Party that we cannot be forced to comply with an unconstitutional law,

we have nevertheless tried to do that. But we have not been able to register the party. The excuse given by the Supreme Court is that Civil Action Party has obtained only 30 endorsements, does not apply to us. By denying review in our case, the Supreme Court of Puerto Rico has shown that it believes that the lawyer-notarization requirement is constitutional even when it prevents a party with demonstrated substantial popular support from appearing on the ballot.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August, 2000.